

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL A. BURNHART,

Petitioner,

v.

CHIEF WRZENSKI,

Respondent.

Case No. C07-5326RBL-KLS

ORDER GRANTING
PLAINTIFF'S MOTION FOR
EXTENSION OF TIME

This matter is before the Court on petitioner's filing of a response and request for a continuance with respect to (Dkt. #24) the Court's order to show cause for failure to respond to, and therefore comply with, the Court's prior order to show cause regarding his unexhausted petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 (Dkt. #23). After reviewing the record, the Court hereby finds and orders as follows:

The Court has detailed the history of the attempts to secure a petition from petitioner that is proper for service in its previous orders on this issue. (See Dkt. #9, #18 and #23). In its last order to show cause, the Court directed petitioner to do the following:

File yet a third amended petition by no later than April 27, 2008, in which petitioner shall:

- (1) Use the court-approved petition form to do so;
- (2) Expressly state on that form, the grounds for *habeas corpus* relief he is raising, clearly indicating that all such claims indeed have been fully exhausted;
- (3) Name the proper respondent, Maggie Miller-Stout; and
- (4) Clearly set forth on the petition form the filing and decision dates of any direct appeal or other post conviction proceedings taken with respect to the conviction and/or sentence.

(Dkt. #23).

On April 14, 2008, instead of filing an amended petition as directed, petitioner filed a response and a request for a continuance, or extension of time, in which to file the amended petition. (Dkt. #24). In that response, plaintiff asks if he can name the Secretary of the Department of Corrections as the respondent, as he will once again be transferred to the Washington Corrections Center, and then to the Lewis County Jail and back, on an unrelated matter. The Secretary, however, is not the proper respondent. Instead, as it appears the Airway Heights Correction Center is where petitioner states he is currently being incarcerated, and appears to be primarily where he is located, he shall name the superintendent thereof, Maggie Miller-Stout, as the respondent in his third amended petition.

Petitioner also requests a 60-day extension of time in which to file his third amended petition, due to the fact that the Lewis County Jail has no law library or supplies with which to do anything with respect to his petition. While given the fact that petitioner already previously has filed petitions and memoranda in support thereof in this case, and thus the Court fails to see the necessity of a law library for the purpose of doing so again, nevertheless petitioner's request shall be granted. Accordingly, petitioner's request for an extension of time (Dkt. #24) hereby is GRANTED to the extent that he shall file his third amended petition by **no later than July 4, 2008. The petitioner is further warned that this is the last extension of time, however, petitioner shall be granted by the Court to do so.**

As directed in its last order to show cause, petitioner's third amended petition **SHALL** comply with the following requirements:

- (1) The petition shall be written or typed using the court-approved petition

1 form, a copy of which shall be provided with this Order;

- 2 (2) Petitioner shall expressly state on that form, the grounds for *habeas*
3 *corpus* relief he is raising, clearly indicating that all such claims indeed
4 have been fully exhausted;
- 5 (3) Petitioner shall name Maggie Miller-Stout as the proper respondent; and
- 6 (4) Petitioner shall clearly set forth on the petition form to the extent known
7 the filing and decision dates of any direct appeal or other post conviction
8 proceedings taken with respect to the conviction and/or sentence.

9 The Clerk shall send a copy of this Order to petitioner, along with a copy of the appropriate court-
10 approved form used for petitions for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254.

11 DATED this 5th day of May, 2008.

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14 Karen L. Strombom
15 United States Magistrate Judge
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